STATEMENT OF THE CASE

Lloyd's is an English corporation, created by the U.K. Parliament through the *Lloyd's Act* 1871:

> The Right Honorable George Joachim Goschen . . . , and all persons admitted as members of Lloyd's before or after the passing of this Act, **are hereby united into a Society and Corporation** for the purposes of this Act, and for those purposes **are hereby incorporated by the name of Lloyd's, and by that name shall be one body corporate**, with perpetual succession and a common seal, and with power to purchase, take, hold, and dispose, of lands and other property (**which incorporated body** is hereafter in this Act referred to as the Society.)

[Lloyd's Act 1871, § 3, entitled "**Incorporation of Lloyd's**" (emphasis added)] (Relevant excerpts of the *Lloyd's Act* 1871 are attached as Exhibit D to Doc. 247). *See also*, the *Lloyd's Act* 1982, Paragraph (1), attached as Exhibit 1 to Doc. 244; *See also*, Doc. 97].[2] Through Parliamentary Acts, the *Lloyd's*

[2] In addition to appealing from the Judgment against him based on the District Court's November 12, 2002 summary judgment Order ["Summary Judgment Order," Appendix ("App.") B to Bennett's Petition for a Writ of Certiorari ("Petition") here], Bennett also appealed from a post-judgment Order, which, among other things, rejected his arguments that the District Court lacked diversity of citizenship subject matter jurisdiction (App. A hereto). In that second appeal, the record consisted of the district court record, because Bennett was *pro se* and not required to file an appendix containing the excerpts of the record he relied on. *See 10th Cir. R.* 30.1. Citations herein to the district court record before the Tenth Circuit in that appeal are by "Doc." No. However in the main (Cont'd)

Acts 1871-1982, the United Kingdom Parliament authorized Lloyd's to regulate the English insurance market. Lloyd's is not an insurer and does not insure risks. Instead Lloyd's promulgates and enforces regulations under the *Lloyd's Acts*, and exercises disciplinary authority over those who conduct insurance business in the Lloyd's market. As an insurance regulator, one of Lloyd's primary objectives is to make sure that valid claims of policy holders are paid. [Declaration of Nicholas P. Demery dated June 7, 2002 ("Demery Dec."), Aple. Supp. App. 168-176, ¶¶ 2, 3]

Individual and corporate members of Lloyd's known as "Names" underwrite insurance. The U.K. *Insurance Companies Act 1982* permits Names to conduct insurance business only as long as they become and remain subject to Lloyd's regulatory jurisdiction (Demery Dec., ¶ 4).[3]

As a condition of becoming members of Lloyd's, and/or continuing to underwrite insurance, Names, including Bennett, entered into agreements governing their membership in Lloyd's and underwriting in the Lloyd's market. Among these

(Cont'd)

appeals related to the merits of the November 12, 2002 Summary Judgment Order, in which Bennett also participated and which were consolidated with Bennett's second appeal, the record before the Tenth Circuit primarily consisted of appendices filed by the defendants other than Bennett, and by Lloyd's. *See 10th Cir. R.* 30.1 and 30.2. These appendices are cited herein as the "Caldwell Def. App," the "Harmsen App" and "Aple. Supp. App." Also, in the district court, Bennett never disputed the facts set forth below (Aple. Supp. App 30-40 and 776-781), and therefore they are deemed admitted by him. *See D. U. Civ. R.* 56-1(c).

[3] This was the applicable statute at all relevant times. The presently applicable statute is the *Financial Services and Markets Act* 2000.

agreements is the General Undertaking. In the General Undertaking, Bennett agreed, in part, (1) that he would comply with the provisions of the *Lloyd's Acts* 1871-1982 and any byelaws or regulations Lloyd's promulgated thereunder, (2) that any dispute arising out of or relating to his membership of and underwriting insurance business at Lloyd's would be resolved in English Courts pursuant to English law, and (3) that an English Judgment would be conclusive, binding and enforceable in any other jurisdiction.[4] (Demery Dec., ¶¶ 5, 6; Caldwell Def. App. 26-37, clauses 1 through 2.3)

Names underwrite insurance by forming groups known as "syndicates." Names' liability is several rather than joint. Bennett incurred liabilities with respect to insurance commitments that he undertook by assuming a portion of a syndicate's risk in the Lloyd's market.[5] In order to close the syndicate at the end of each underwriting year of account, reinsurance is purchased to cover any outstanding liabilities as well as liabilities that have been incurred but not reported. (Demery Dec., ¶ 7)

Underwriting in the Lloyd's market was historically a profitable venture. However, in the late 1980s and early 1990s, Names in the Lloyd's market incurred substantial underwriting losses (over $12 billion). As a result of these losses, Names

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[4] Under the *Lloyd*'s Acts, Names could only participate in the Lloyd's market through an underwriting agent, which would contractually assume management responsibilities over Names' underwriting activities.

[5] Bennett and his co-defendants (the "Utah Names") are all highly educated, financially sophisticated professionals and business people. (Caldwell Def. App. 94, ¶¶ 3, 4; 98, ¶¶ 3, 4; 104, ¶¶ 3, 4; 109, ¶¶ 3, 4; 114, ¶¶ 3, 4; 118, ¶¶ 3, 4; Harmsen App. 51, 52, ¶¶ 2, 3) As Bennett indicates in his Petition here, he is a retired law professor.

underwriting in those years were unable to purchase affordable reinsurance for their outstanding liabilities, thus making those liabilities open-ended. Many Names defaulted on their underwriting obligations as they came due, putting policyholders at risk of non-payment. Simultaneously, a significant amount of litigation began to embroil the Lloyd's market. (Demery Dec. ¶ 8)

To address these issues, which threatened the viability of the Lloyd's market, Lloyd's devised the reconstruction and renewal ("R&R") plan. The R&R plan provided reinsurance otherwise unavailable to each Name with respect to his or her pre-1993 underwriting obligations, through a newly formed company, Equitas.[6] The R&R plan also provided an offer of settlement (the "Settlement Offer") to each Name with pre-1993 underwriting liabilities, to end litigation and assist the Names in meeting their underwriting obligations. (Demery Dec. ¶ 9)

The cost of reinsuring each Name's pre-1993 liabilities (the "Equitas Premium") was individually calculated and charged to the particular Name.[7] Names who wished to resign their membership in Lloyd's would be able to do so upon payment of their Equitas Premium and other outstanding obligations. Names who did not accept the Settlement Offer

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[6] Equitas is part of the Equitas Group of business entities that was created as part of the R&R plan. (Ex. B to Doc. 247, pp. 81-82; Ex. 8 to Doc. 244, pp. 81-82) All of the companies in the Equitas Group—including Equitas—are private limited companies *incorporated in England and resident in the United Kingdom for tax purposes.* (Ex. B to Doc. 247, p. 83; Ex. 8 to Doc. 244, p. 83)

[7] While the Bennett disputes the accuracy of these calculations, that issue goes to the merits of Lloyd's English Judgments, which, as shown below, could not be relitigated in the district court here.

did not receive certain credits that the settling Names received to offset their Equitas Premiums, but could continue to litigate with Lloyd's and others who did business in the Lloyd's market. If the Settlement Offer was not accepted, a Name was still required to pay the full amount of his or her underwriting obligations, including the Equitas Premium. (Demery Dec. ¶ 9)

In implementing the R&R plan, and pursuant to the Substitute Agent's Byelaw of 1983 passed pursuant to s.6 and Schedule 2, paragraph (18)(b) of the *Lloyd's Act* 1982 (Aple. Supp. App. 984) Lloyd's appointed a substitute agent and required each Name to become a party to the Equitas reinsurance contract through that substitute agent. This substitute agent signed the contract on behalf of the Name. (Demery Dec. ¶ 10)

The Equitas reinsurance contract contained a "pay now, sue later" clause that precluded Names from asserting claims they might have had against Lloyd's or others as a set-off or counterclaim to payment of their Equitas Premium. The Equitas reinsurance contract also contained a "conclusive evidence" clause which provided that, "in the absence of manifest error," Lloyd's determination of a Name's Equitas Premium was conclusive (Demery Dec. ¶ 10).[8]

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[8] English Courts have held that the R&R plan was within Lloyd's regulatory authority, including the mandatory requirement that Names purchase reinsurance from Equitas. (Demery Dec. ¶ 10) Also, the "pay now, sue later" and "conclusive evidence" provisions, and Lloyd's right to appoint a substitute agent, were not new. Similar provisions were included in agency agreements the Names (including Bennett) signed with their underwriting agents at Lloyd's. [Aple. Supp. App. 19-29, ¶¶ 9(a) and (b) and 13(b); Harmsens App. 16, ¶ 9(a) and (b); 18-19, ¶ 13(b); 29, ¶ 9(a) and (b); 31-32, ¶ 13(b); *see also*, Caldwell Def. App. 632, ¶ 10; 658, ¶ 7.1(d)]

The R&R plan became effective on September 3, 1996. Less than five percent of all Names did not accept the Settlement Offer (which had a deadline for acceptance of August 28, 1996, subsequently extended to September 11, 1996). A still smaller number refused to pay the Equitas Premium, which became due and payable on September 30, 1996. Even though Bennett did not accept the Settlement Offer, he was still required to pay his full underwriting obligation, including the Equitas Premium. He failed to make payment, and Equitas subsequently assigned the right to recover payment of the Equitas Premium to Lloyd's. (Demery Dec. ¶¶ 11, 12)

Beginning in late 1996, Lloyd's brought separate actions in England against Bennett and other Names who had not paid the Equitas Premium (the "English Actions"). In the English Actions, Lloyd's sought payment of each of the Names' respective Equitas Premiums plus unpaid interest and costs. The English Actions were commenced by filing a Writ of Summons (equivalent to a complaint in U.S. litigation) in the English Court (High Court of Justice, Queen's Bench Division) against Bennett and other Utah Names. (Demery Dec. ¶ 13)

Lloyd's served Bennett, through his agent for service of process, with a Writ of Summons. He filed an Acknowledgment of Service through his English solicitors of record, the firm of Epstein Grower and Michael Freeman, thereby appearing in the English Court and notifying Lloyd's of his intent to contest the claim and to be represented by those English solicitors. (Demery Dec. ¶ 14)

In 32 days of hearings before English trial and appellate courts, the Names raised several defenses to entry of judgments by the English Court. (Demery Dec. ¶ 17) The defenses included the following, all of which were rejected: (1) that Lloyd's lacked

the regulatory authority under the *Lloyd's Acts* 1871-1982 to mandate that all Names purchase reinsurance coverage from Equitas; (2) that Names were entitled to rescind their membership in Lloyd's as a result of alleged fraud in the inducement of their membership of, or underwriting at, Lloyd's; (3) that Names were entitled to litigate their claims of fraud in the inducement as a defense or set-off to their obligation to pay the Equitas Premium; and (4) that the Names were not bound by the "pay now, sue later" and the "conclusive evidence" clauses in the Equitas reinsurance contract.[9]

The English Court entered judgments in favor of Lloyd's against Bennett and the other Names on March 11, 1998. (Demery Dec., Ex. A-I, Aple. Supp. App. 224, 273, 320, 368, 415, 461, 509, 557, 605) A three judge panel of the United Kingdom Court of Appeal heard argument on the application for leave to appeal by Names from June 15-19, 1998. Leave to

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[9] *See Society of Lloyd's v. Leighs and Others* (High Court of Justice February 20, 1997) (Demery Dec., Ex. J, Aple. Supp. App. 622-680); *Society of Lloyd's v. Wilkinson & Others* (High Court of Justice April 23, 1997) (Demery Dec., Ex. J, Aple. Supp. App. 682-704); *Society of Lloyd's v. Lyon; v. Leighs; v. Wilkinson*, (C.A. July 31, 1997) (Demery Dec., Ex. J, Aple, Supp. App. 608-619) (affirming rulings of lower court); Society of Lloyd's v. Fraser & Others (C.A. July 31, 1998), denying leave to appeal from High Court of Justice decisions dated December 3, 1997 and January 22 and March 4, 1998 (Demery Dec., Ex. K, Caldwell Def. App. 38-68). The Names were allowed to litigate their fraud claims separately in *Society of Lloyd's v. Jaffray*, 2000 WL 1629463 (High Court of Justice November 2, 2000), *aff'd*, 2002 WL 1654876 (C.A. July 26, 2002) (Aple. Supp. App. 782-936). The Names lost the *Jaffray* case, in which Bennett and the other Utah Names decided not to participate. Also, notwithstanding the "conclusive evidence clause," Lloyd's was required to produce documentation showing how the Equitas Premiums were calculated (*Fraser, supra*, Caldwell Def. App. 64-65).

appeal was denied on July 31, 1998. *See, Society of Lloyd's v. Fraser & Others, supra* (Demery Dec., Ex. K, Caldwell Def. App. 38-68).[10] Thus, all appeals from the entry of the English Judgments were exhausted.[11]

Bennett and the other Utah Names had not satisfied their judgment debts, and on March 8, 2002, Lloyd's filed its Complaint in Utah federal district court to enforce its English Judgments against Bennett and the other Utah Names. (Aple. Supp. App. 1-18)

REASONS FOR DENYING THE PETITION

I. THE TENTH CIRCUIT CORRECTLY DETERMINED THAT THERE WAS COMPLETE DIVERSITY OF CITIZENSHIP BETWEEN LLOYD'S, AN ENGLISH CORPORATION, AND THE DEFENDANTS IN THE DISTRICT COURT, WHO ARE ALL INDIVIDUAL RESIDENTS OF THE STATE OF UTAH

A. Background

As the Tenth Circuit recognized below, the U.K. Parliament gave powers to Lloyd's to regulate the English insurance market.

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[10] As to certain of their arguments, the Names filed leave to appeal (the equivalent of a U.S. petition for writ of certiorari) with the Judicial Committee of the House of Lords (the equivalent of the U.S. Supreme Court), which was denied. *See Society of Lloyd's v. Turner*, 303 F.3d 325, 328 (5th Cir. 2002).

[11] The foregoing undisputed facts are also set forth in the Tenth Circuit decision below that is the subject of Bennett's Petition here. *See Society of Lloyd's v. Reinhart*, 402 F.3d 982 (10th Cir. 2005), App. A to Bennett Petition, pp. 5a-14a.

See, Society of Lloyd's v. Reinhart, supra, App. A to Bennett Petition here, p. 5a. Early in its existence, Lloyd's may have been considered a kind of unincorporated association. However, this status changed over one hundred years ago, when Parliament explicitly incorporated Lloyd's (Ex. D to Doc. 247, *Lloyd's Act* 1871, § 3, entitled "Incorporation of Lloyd's"). As the Tenth Circuit also recognized below, since 1871 Lloyd's has been a corporation organized and existing by Acts of Parliament. *See also,* Doc. 97, *Lloyd's Act* 1982, ¶ 1; *Reinhart, supra*, App. A to Bennett Petition here, p. 38a.

Also, as established above, Lloyd's is not an insurer and does not insure risks. The only insurers in the Lloyd's market are underwriting members of Lloyd's who are known as Names. Names underwrite insurance by forming groups known as "syndicates," and each Name incurs personal liability with respect to insurance commitments that he or she undertakes by assuming a portion of a syndicate's risk in the Lloyd's market. (Demery Dec., Doc. 30, ¶¶ 2, 4, 7; *Reinhart, supra*, App. A to Bennett Petition here, p. 5a; Summary Judgment Order, App. B to Bennett Petition here, pp. 46a, 47a) Thus, Lloyd's is a legal entity separate and distinct from the entities operating in the market it regulates, and from the members of the syndicates who underwrite insurance in that market.

B. As an English Corporation, Lloyd's is a Citizen of England.

Bennett's assertion that all the members of Lloyd's have the same citizenship as Lloyd's is wrong because Lloyd's is an English corporation. A U.S. corporation is a citizen of the state where it has been incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). As to foreign corporations, "[I]t has long been the rule that a corporation

incorporated in a foreign nation is a citizen of that nation for purposes of diversity jurisdiction." *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540, 543 n.12 (5th Cir. 1997); *see also, National S.S. Co. v. Tugman*, 106 U.S. 118 (1882).[12]

Bennett's argument that Lloyd's takes the citizenship of its members is incorrect on a number of fronts. Because Lloyd's is a corporation, it has a citizenship independent of the citizenship of its members. The quotation from Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 2d* ("*Wright & Miller*"), Vol. 13B, § 3623, p. 592 (West 1984) at p. 16 of Bennett's Petition here, to the effect that the stockholders of a foreign country corporation are presumed to be citizens of that country, is taken out of context. The full quotation reads:

> Thus, a presumption exists that all the stockholders of a corporation chartered by a foreign country are citizens of that country, **and the corporation may sue or be sued in the federal courts as an alien.**

(Emphasis added to indicate the portion omitted by Bennett.)

Moreover, as the surrounding pages in *Wright & Miller* explain, the presumption that stockholders have the same citizenship as their corporation arose from the outmoded concern that a corporation, an artificial being, could not be a citizen within the meaning of the Constitution, and therefore could not sue in federal court. *Wright & Miller*, § 3623, pp. 587-597. At one point the Supreme Court held that because a corporation was not a citizen, it could only act as an association of its

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[12] Thus, the cases Bennett cites at p. ii of his Petition here, which deal with the citizenship of U.S. national banking associations, are irrelevant.

stockholders, and therefore the citizenship of its stockholders controlled for purposes of federal diversity jurisdiction. *Id.* at pp. 589-90, citing *Bank of the United States v. Deveaux*, 5 Cranch (9 U.S.) 61, 3 L. Ed.38 (1809). Later, the Supreme Court changed this reasoning—in part because plaintiffs were often unable to bring suit in federal court against corporations with shareholders from various states—and established the presumption that all of the stockholders of a corporation were citizens of the state of incorporation. *Id.*, at pp. 590-91, citing *Marshall v. Baltimore & Ohio Railroad Co.*, 16 How. (57 U.S.) 314, 14 L. Ed. 953 (1853).

As *Wright & Miller* makes clear, this presumption has been modified by 28 U.S.C. § 1332(c)(1), which states that for purposes of diversity of citizenship, a U.S. corporation is a citizen of 1) the state in which it has been incorporated and 2) the state where it has its principal place of business. *Id.* at p. 592. Section 1332(c)(1) does *not* state that a stockholder of a corporation has the same citizenship as that corporation; and it does *not* state that U.S. stockholders of a foreign corporation have the same citizenship as that corporation. The settled law is that "diversity jurisdiction is present in suits between citizens of a State and citizens or subjects of a foreign state." *Torres, supra*, 113 F.3d at 543.[13] As *Wright & Miller* goes on to explain, ". . . [T]he presumption that all the stockholders of a corporation are citizens of the state of incorporation was of doubtful accuracy in 1854 and . . . *is totally unwarranted today.*" *Wright & Miller* § 3623 at p. 602 (emphasis added).

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[13] 28 U.S.C. § 1332 (a)(2) provides that diversity of citizenship exists between "(2) citizens of a State and citizens or subjects of a foreign state".

Nicholas Demery's statement in his declaration that Lloyd's is "a Society and Corporation incorporated under the *Lloyd's Acts* 1871-1982 comprising all persons admitted as members of Lloyd's," (as quoted in Bennett's Petition here at p. 23) does not contradict Lloyd's position in the least. The fact that Lloyd's is comprised of its members is irrelevant for purposes of U.S. diversity jurisdiction. As Demery's statement correctly points out, Lloyd's is a corporation. Therefore, it takes the citizenship of the nation of its incorporation: England, not that of its members.

Also, Bennett is deliberately confusing Lloyd's with the underwriting syndicates. *Indiana Gas Co. v. Home Ins. Co.*, 141 F.3d 314 (7th Cir. 1998), discussed by Bennett at pp. 21-22 of his Petition here, involves syndicates and their insureds, not Lloyd's.[14] As the district court recognized in the Summary Judgment Order (App. B to Bennett's Petition here), the syndicates are not Lloyd's. This case does not involve any syndicates. It is a dispute between a corporation (Lloyd's) and an individual (Bennett) by which Lloyd's seeks to enforce an English judgment against the individual. The syndicates are irrelevant to this case, and any analysis of their citizenship is inapposite.

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[14] On page 17 of his Petition here, Bennett also cites *O'Connor's Federal Rules, Civil Trials 2003*, for the proposition that "[f]or Lloyd's of London, diversity is determined by the residence of each name." Lloyd's counsel is not familiar with O'Connor's Federal Rules, and—despite inquiries at local law libraries—has been unable to locate a copy of this source. However, O'Connor was referring to the syndicates, not Lloyd's itself. Bennett acknowledged as much in the district court on p. 15 of Doc. 244, in which he added a bracketed reference to the syndicates in the above quote: "for Lloyd's of London [***syndicates***], diversity is determined by the residence of each name." (Emphasis added)

As an English corporation, Lloyd's is a citizen of England. Because each of the Utah Names is a citizen of the State of Utah, diversity jurisdiction is proper. *See, Society of Lloyd's v. Bila*, Civil No. A-03-CA-9 (W.D.Tex. May 21, 2003) (App. B hereto), and *Society of Lloyd's v. Sommer*, Civil Action No. 02-RB-1959 (OES) (D. Colo. September 9, 2004) (App. C hereto), in which the courts held that there was diversity jurisdiction in cases—just like this one—where Lloyd's filed suit to enforce an English judgment against an American Name.

II. THE TENTH CIRCUIT CORRECTLY DETERMINED THAT AN ASSIGNMENT OF CLAIMS FROM ONE ENGLISH CORPORATION, EQUITAS, TO ANOTHER ENGLISH CORPORATION, LLOYD'S, WAS NOT A COLLUSIVE ASSIGNMENT FOR PURPOSES OF CREATING DIVERSITY OF CITIZENSHIP

A. The Assignment at Issue is Equitas' Assignment to Lloyd's of Equitas' Claim Against Bennett Based on Bennett's Failure to Pay the Equitas Premium.

Bennett's argument that the assignment from Equitas to Lloyd's voids diversity jurisdiction is based on a misunderstanding of the facts and the law. 28 U.S.C. § 1359 states that "a district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." The purpose of this statute is to prevent parties from manufacturing diversity jurisdiction through the assignment of a claim from a non-diverse party to a diverse party. *See Amoco Rocmount Co. v. Anschutz Corp.*, 7 F.3d 909, 916 (10th Cir. 1993), *cert. den.*, 510 U.S. 1112 (1994). Here, the undisputed facts in the record demonstrate that the

assignment in question, from one English corporation, Equitas, to another English corporation, Lloyd's, was not collusive.

Equitas was created as part of Lloyd's R&R plan, and it provided otherwise unavailable reinsurance to each Name. The cost of this reinsurance was called the Equitas Premium. The R&R plan also provided a settlement offer to each Name, which would have provided financial assistance to the Name in paying the Equitas premium, in return for a release of litigation claims. Those Names that did not settle were still required to pay the full amount of their underwriting obligations, including the Equitas Premium. After the R&R plan had become effective, in September 1996 Equitas assigned to Lloyd's the Equitas right to recover payment of the Equitas Premium from the non-settling Names. *See, Reinhart, supra*, App. A to Bennett Petition here, p. 11a. Lloyd's then sued many of the non-settling names, obtained English Judgments, and, with respect to many of those judgments against American Names, sought enforcement in America. (Summary Judgment Order, App. B to Bennett's Petition here)

Thus, the underlying claim is *Equitas' claim* for the Equitas Premium; it is not a claim that was ever held by Bennett's underwriting agents,[15] or the syndicates in which he is a member. Accordingly, Bennett's apparent attempts in his Petition here, to argue that the syndicates are the real parties in interest, are incorrect and have no evidentiary basis in the record.[16]

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[15] Bennett's initial underwriting agent was William Edwards Coutts & Partners, Ltd., which Bennett refers to several times in his Petition here.

[16] Moreover, the syndicates are not legal entities and are managed by the participating Names' agent.

B. Because Equitas is Also an English Corporation, Its Assignment to Lloyd's Was Not Collusive.

The assignment from Equitas to Lloyd's cannot be collusive because Equitas, like Lloyd's, is an English corporation and diverse from the Utah Names. The law only prohibits improper or collusive assignments that create diversity jurisdiction. *Western Farm Credit Bank v. Hamukua Sugar Co., Inc.*, 841 F. Supp. 976, 981 (D. Hawaii 1994), *aff'd*, 87 F.3d 1326 (9th Cir. 1996). As Judge Posner has observed with respect to 28 U.S.C. § 1359, "the statute can have no application where the assignor could have sued in federal court as well as the assignee." *Steele v. Hartford Fire Ins. Co.*, 788 F.2d 441, 445 (7th Cir. 1986). Thus, if the assignor is already diverse from the party in question, then the assignment cannot *create* diversity jurisdiction; diversity jurisdiction already existed.

As the Tenth Circuit held below, the record demonstrates that Equitas is a citizen of England. Equitas is part of the Equitas Group, and "[a]ll the companies in the Equitas group are all private limited **companies incorporated in England** and resident in the United Kingdom for Tax purposes." [Ex. B to Doc. 247, pp. 81-83 (emphasis added); *Reinhart, supra*, App. A to Bennett's Petition here, p. 38a] There is no evidence in the record to suggest that Equitas is a citizen of any other nation or state, much less the State of Utah.

Equitas is diverse from Bennett and the other Utah Names and therefore, as a matter of law, the assignment of its claim to Lloyd's is not collusive. Lloyd's has established that there was no collusive assignment and diversity jurisdiction is proper.[17]

[17] Contrary to the implication in Bennett's Petition here at p. i, n.1, there is no conflict between the circuits regarding the diversity issues Bennett attempts to raise.

III. THE OTHER ISSUES THE PETITION RAISES ARE ISSUES OF UTAH LAW ONLY

Bennett ignores the standards governing this Court's grant of certiorari, as set forth in *Sup. Ct. R.* 10:

> **Rule 10.** *Considerations Governing Review on Certiorari*
>
> Review on a writ of certiorari is not a matter of right, but of *judicial discretion.* A petition for a writ of certiorari will be granted only for *compelling reasons.* The following, although neither controlling nor fully measuring the Court's discretion, indicate the *character of the reasons the Court considers*:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an *important federal question* in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an *important federal question* in a way that conflicts with relevant decisions of this Court.

> (c) a state court or a United States court of appeals has decided an *important question of federal law* that has not been, but should be settled by this Court, or has decided an *important federal question* in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

(Emphasis added.) Thus, this Court grants certiorari primarily to consider "important federal questions."

As to the issues other than diversity of citizenship, Bennett does not suggest why this Court should have any interest in reviewing a decision by the Tenth Circuit interpreting purely Utah law, particularly where, as discussed below, the Tenth Circuit's decision was based upon, and is consistent with, decisions of the Utah Supreme Court and Utah Court of Appeals (as well as all of the other various federal circuits that have considered the comity issues).[18]

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[18] Also, Bennett does not identify any criteria under *Sup. Ct. R.* 10 that would justify granting certiorari as to the diversity of citizenship federal law issues discussed above.

IV. THE TENTH CIRCUIT CORRECTLY INTERPRETED UTAH LAW IN DETERMINING THAT LLOYD'S ENGLISH JUDGMENT AGAINST BENNETT IS ENFORCEABLE UNDER PRINCIPLES OF COMITY

In *Reinhart, supra*, App. A to Bennett's Petition here, the Tenth Circuit considered consolidated appeals by Bennett and the other Utah Names, as well as a consolidated appeal by Mr. Reinhart, a New Mexico Name. As to Mr. Reinhart, the Court held that Lloyd's English Judgment against him was enforceable under New Mexico's version of the *Uniform Foreign Money - Judgment Recognition Act* ("Uniform Act"), also adopted in many other states. (App. A to Bennett Petition, pp. 2a-4a, 16a-29a)

However, Utah has not adopted the Uniform Act. Therefore, the Tenth Circuit analyzed the enforceability of Lloyd's English Judgments against Bennett and the other Utah Names under Utah common law principles of comity. *See Reinhart, supra*, App. A to Bennett Petition, pp. 29a-33a. However, before addressing the Utah law of comity, the Court noted that Lloyd's English Judgments against American Names have been uniformly enforced in numerous federal courts[19] (applying state

[19] There is no split in the circuits. *See Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7th Cir. 2000); *Society of Lloyd's v. Turner, supra*; *Society of Lloyd's v. Mullin*, 96 Fed. Appx. 100 (3rd Cir. May 5, 2004); *Society of Lloyd's v. Davies*, 107 Fed. Appx. 887 (11th Cir. May 21, 2004); *Society of Lloyd's v. Blackwell*, 127 Fed. Appx. 961 (9th Cir. April 13, 2005); *Society of Lloyd's v. Shields*, 118 Fed. Appx. 12 (November 17, 2004) (applying common law); *Society of Lloyd's v. Borgers*, 127 Fed. Appx. 959 (9th Cir. April 13, 2005) (applying common law), all of which have enforced Lloyd's English Judgments at issue, against American Names.

law) and state courts across the country, typically on motions for summary judgment by Lloyd's under either the Uniform Act or common law principles of comity. *See* cases cited in App. A to Bennett Petition, p. 15a, n.3.[20]

With respect to the Utah common law of comity, the Tenth Circuit correctly held that in *Mori v. Mori*, 931 P.2d 854, 856 (Utah 1997), the Utah Supreme Court ruled that foreign country judgments are enforceable in Utah under common law principles of comity set forth in *Hilton v. Guyot*, 159 U.S. 113 (1895). *See, Reinhart, supra*, App. A to Bennett Petition, p. 30a.[21] *Reinhart* also held that under *Hilton*, foreign nation judgments

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[20] *See also, Society of Lloyd's v. Collins*, Case No. 00-713-CA-22 (19th Cir. Ct., Indian River County, Florida, June 4, 2003), *aff'd*, Case No. 4D03-2674 (Fla. 4th Dist. Ct. App. May 19, 2004); *Society of Lloyd's v. Rosenberg*, No. 02-1195 (E.D. Pa. August 13, 2002); *Society of Lloyd's v. Byrens*, Civil No. 02CV449 (S.D. Cal. May 29, 2003); *Society of Lloyds v. Evnen*, No. 8:02CV 118 (D. Neb. April 28, 2003) (applying common law); *Society of Lloyd's v. Edelman*, 03 Civ. 4921 (WHP) (S.D.N.Y. March 21, 2005), available at 2005 WL 639412; *Society of Lloyd's v. Hudson*, 276 F. Supp. 2d 1110 (D. Nev. 2003) (applying common law); *Society of Lloyd's v. Fuerst*, Case No. 04-2964 (8th Cir. July 11, 2005), available at 2005 WL 1606011; *Society of Lloyd's v. Siemon-Netto*, Civil Action No. 03-1524 (JR) (D.D.C. 2004).

[21] Even though the Uniform Act does not apply directly in Utah, the Uniform Act is based on common law principles of comity under Hilton and its progeny. *See* Uniform Act, § 4, Comment, Vol. 13, Part II, *Uniform Laws Annotated* 43, 59 (West 2002); *Ashenden*, 233 F.3d at 476-477 (citing *Hilton*). Thus, decisions like *Ashenden* and *Turner*, enforcing Lloyd's English Judgments under the Uniform Act, are persuasive authority here.

are enforceable in the U.S. if the following requirements are met:

> (1) there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction,
>
> (2) conducting the trial upon regular proceedings, after due citation or voluntary appearance of defendant,
>
> (3) under a *system* of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries,
>
> (4) there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or
>
> (5) no other special reason exists indicating why the comity of this nation should not allow it full effect.

Reinhart, App. A to Bennett Petition, pp. 30a-31a, quoting *Hilton* at 159 U.S. 202 (emphasis added by *Reinhart*).

Reinhart then held that under Utah law, ". . . the validity of a foreign judgment 'should be tested by the law of the jurisdiction where the judgment was rendered.'" [App. A to Bennett Petition, p. 31a, citing *Rocky Mtn. Claim Staking v. Frandsen*, 884 P.2d 1299, 1300-1301 (Utah App. 1994), *cert. den.*, 899 P.2d 1231 (Utah 1995)]. Thus, the Tenth Circuit ruled that under Utah law foreign country judgments are entitled to

comity based on an analysis of the foreign judicial system, not the particulars of the individual judgment, and there is no question about the fairness of the English judicial system:

. . .

> We have no choice under Hilton and Rocky Mountain but to examine the entirety of the foreign judicial system, and not the particularity of individual judgments.
>
> . . .
>
> *Like all the other circuits that have examined the question*, we have already determined that the English judicial system is procedurally above reproach.
>
> . . .

(App. A to Bennett Petition, pp. 31a-32a, citing 1 *Restatement (Third) of Foreign Relations* § 482 cmt. b (1987) and *Ashenden, supra*, 233 F.3d at 478, emphasis added).

Notwithstanding the foregoing, *Reinhart* noted that the district court did analyze the English court cases (cited in the Statement of the Case, above) with respect to the challenges of Names like Bennett to their liability to Lloyd's (App. A to Bennett Petition, pp. 32a-33a). *Reinhart* concluded that in those cases Bennett and the other Utah Names ". . . were given a full and fair opportunity to litigate their claims before the English courts." (*Id.* at p. 33a).[22]

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[22] In this regard, *Reinhart* further noted that there were ". . . thirty-two days of hearings before English trial and appellate courts . . ." (Cont'd)

Reinhart then went on to reject Bennett's claims under the anti-waiver provisions of the Utah Uniform Securities Act, *Utah Code Ann.* § 61-1-22(9), based on its decision in *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953 (10th Cir. 1992), *cert. den.*, 506 U.S. 1021 (1992), and the Ninth Circuit decision in *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998), *cert. den.*, 525 U.S. 943 (1998), in which Bennett was a party (App. A to Bennett Petition, pp. 8a-10a, 38a-40a).[23]

What Bennett sought in the Tenth Circuit, and what Bennett's Petition here seeks, is the right to litigate Lloyd's underlying claims against him in Utah, applying Utah law. However, as he agreed in his General Undertaking with Lloyd's, those claims have already been litigated before English courts, applying English law. As shown above, under Utah law, and according to every federal circuit court decision that has considered the issues, Lloyd's English Judgments against U.S. Names are fully enforceable in U.S. Courts, without relitigating the merits of those Judgments.[24]

(Cont'd)

Id. at p. 4a. Also, after a 19 week trial in England in *Jaffray*, *supra*, the Names (not including Bennett and the other Utah Names, who elected not to participate) lost their fraud claims against Lloyd's (App. A to Bennett Petition, p. 13a). That decision was affirmed on appeal. *Id.*

[23] The dicta Bennett cites on this point from factually unrelated Supreme Court decisions, at pp. 11-12 of his Petition, does not apply here.

[24] The so-called accounting issues Bennett seeks to raise in his Petition either were litigated and lost in the English courts (Bennett Petition, p. 27; *Reinhart*, App. A to Bennett Petition, pp. 12a-13a), or are based not on claims Bennett has against Lloyd's, but on claims he has against managing agents of syndicates regulated by Lloyd's (Bennett Petition, pp. 3, 27). Again, Bennett confuses Lloyd's with the syndicates.

CONCLUSION

Based upon the foregoing, Bennett's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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